Supreme Court, U.S.
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No. 02-1351

IN THE

Supreme Court of the United States

LNC INVESTMENTS, INC. and
CHARTER NATIONAL LIFE INSURANCE COMPANY,

Petitioners,

v.

FLEET NATIONAL BANK and
UNITED JERSEY BANK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT FLEET NATIONAL BANK

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CORPORATE DISCLOSURE STATEMENT

National Westminster Bank N.J. was merged with National Westminster Bank U.S.A. and became NatWest Bank, N.A. in 1995, which then merged with Fleet Bank of New York, N.A. in 1996, which then changed its name to Fleet Bank, N.A. Fleet Bank, N.A. was merged into Fleet National Bank in 2000. Fleet National Bank is a wholly-owned subsidiary of FleetBoston Financial Corporation.

United Jersey Bank, whose name was changed to Summit Bank on July 12, 1996, became a wholly-owned subsidiary of Summit Bancorp. On March 1, 2001 Summit Bank was merged into Fleet National Bank, a wholly-owned subsidiary of FleetBoston Financial Corporation.

A PERCEIVED MISSTATEMENT

"Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement in the petition." See Rule 15.2.

With this admonition in mind, we respectfully point out to the Court that the core argument in the petition is predicated on a misstatement of what the Court of Appeals held in its 1999 opinion in this case.

Petitioners claim, in "Question Presented", that

> The Court of Appeals, in a 1999 opinion in this case, held that it was appropriate for the district court, on remand, to decide the central legal issue in this case and instruct the jury to follow that decision in determining the primary fact issue in this case, *i.e.* whether the Respondents acted prudently.

This is simply incorrect.

The Court of Appeals stated, in its 1999 Opinion, ". . . because the instruction did not give the jury any guidance on the law of superpriority status, it left the jury without a legal context to decide whether the Trustees' delay, if imprudent, *caused injury* to the Bondholders." (91a). The Court of Appeals instructed the district court, on remand, to "decide the superpriority issue" and then "determine what type of charge on *superpriority and causation* is appropriate in light of any factual disputes remaining in the new trial." (92a). In short, the Court of Appeals held that the

superpriority issue (contrary to the thrust of the petition) was pertinent to the issue of *causation*, not to the issue of *prudence*.

Since the jury, on remand, decided the issue of *prudence* against the Bondholders and in favor of the Trustees, it quite correctly never reached the issue of *causation*. It is, thus, simply fallacious for Petitioners to argue either that (a) the Court of Appeals changed its position in its 2002 opinion or that (b) the Court of Appeals, in declining to review the legal ruling by the district court on the issue of superpriority status, somehow denied Petitioners "due process". The Court of Appeals did no such thing: it held, both in 1999 and in 2002, that the issue of superpriority status was pertinent to the issue of *causation*, not to the issue of *prudence*,[1] and it held, in 2002, quite correctly, that the correctness *vel non* of the legal ruling on superpriority status was not reached on that appeal because the jury's verdict on *prudence* ended the case.

REASONS FOR DENYING THE PETITION

This case was, in the final analysis, a fact-intensive case: the jury was asked to determine whether or not the Trustees had acted prudently, and did so. No law issue intruded.

The Court of Appeals did not enter a decision in conflict with the decision of another United States court of appeals.

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1. Furthermore, the District Court (contrary to the statement in the petition at p. i) never "instructed the jury to follow that decision [*i.e.* the ruling on superpriority status] in determining the primary fact issue, *i.e.* prudence." Indeed, the District Court told the jury: "Of course, the question whether any trustee acted imprudently at any time is for you and you alone to say." (Trial Transcript p.2334, lines 9-10).

The Court of Appeals did not decide an important federal question in a way that conflicts with a decision by a state court of last resort.

And, contrary to the argument in the petition, the Court of Appeals did not so far depart from the accepted and usual course of judicial proceedings, or sanction such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

The so-called "difficult but important issue", *i.e.* the issue of superpriority status, was (a) peripheral to the case since it did not arise in the context of a Bankruptcy Court granting or denying a superpriority claim, (b) was not pertinent to the appeal in 2002 since the jury never reached the issue of causation, and (c) in any event, was correctly decided by the District Court.

No further review of this case is warranted.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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